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COMMISSIONER

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In 1975, taxpayer A sold 1,000 shares of the common stock of a corporation to B for \$54,025. The sale was reported as an installment sale on A's 1975 federal income tax return. The entire long-term capital gain of \$47,915 was reported on A's 1975 Massachusetts return and Massachusetts income tax in the amount of \$4,636 ($\$47,915 \times 9.675\%$) was paid on this gain. In 1982, B defaulted on the promissory note. A lawsuit was initiated to recover the balance of \$18,965, but A does not expect to recover the debt. You inquire what will be the 1983 Massachusetts income tax result of this loss.

For taxable years beginning on or after January 1, 1983, Massachusetts gross income is federal gross income as defined under the Internal Revenue Code as amended on February 1, 1983 and in effect for the taxable year with certain modifications. (G.L. c. 62, §§ 1(c), 2(a)).

A taxpayer having, in a taxable year, an installment transaction under Internal Revenue Code Section 453(a), may make one of the following elections for Massachusetts income tax purposes:

(1) The taxpayer may elect to treat the sale as an installment transaction for Massachusetts purposes and make no modification to federal gross income with respect to this transaction in determining Massachusetts gross income. If the taxpayer elects this treatment, he must deposit, with the Commissioner, security equal to the amount of tax which would have been imposed had all payments been received in one year. (G.L. c. 62, § 63(d)).

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(2) The taxpayer may elect to modify federal gross income by eliminating the effect of I.R.C. § 453(a) and treat all installment payments as being received in the taxable year. In all subsequent taxable years, any item of federal gross income included with respect to the installment transaction should be excluded from Massachusetts gross income. (G.L. c. 62, § 63(e)).

Massachusetts income tax law provides for certain deductions allowable under Code Section 62, including the deduction for capital losses provided for in Code Section 165(f). (G.L. c. 62, § 2(d)).

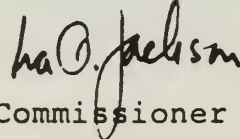
Massachusetts long-term and short-term capital gains and losses are determined in the same manner as federal long-term and short-term gains and losses. (L.R. 80-84).

Because taxpayer A elected to forego installment treatment of this transaction for Massachusetts income tax purposes, federal gross income must be modified in both the year of sale and for subsequent years in order to determine Massachusetts gross income. Federal gross income must also be modified in the year of default.

If the effect of Code Section 453 were eliminated for federal purposes, a long-term capital gain of \$47,915 would have been reported on A's federal tax return for 1975. Therefore, in the year of default on the note, A would have realized a loss for federal income tax purposes equal to the remaining basis in the original stock, plus any amount reported as income in 1975 and not yet received.

For Massachusetts income tax purposes, taxpayer A may realize a capital loss in 1983 equal to the remaining basis in the stock, plus any amount reported as income from the installment sale in 1975 and not yet received. (A's loss will equal the balance due on the promissory note).

Very truly yours,



Commissioner of Revenue

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